

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**BARRY GAINES,
#19045055,**

Petitioner,

v.

**SHERIFF MARIAN BROWN,
Respondent.**

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Civil Case No. 3:19-CV-3051-N-BK

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Petitioner filed objections, and the Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus under 28 U.S.C. § 2241 is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state court remedies.

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing § 2254 proceedings, and 28 U.S.C. § 2253(c), the court **DENIES** a certificate of appealability. *See Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998) (requiring state pretrial detainee challenging criminal charges pending against him to obtain a certificate of appealability following district court’s denial of petition under 28 U.S.C. § 2241). In light of the ruling in this case, the court concludes that petitioner has failed to show (1) that reasonable jurists would find this court’s “assessment of the constitutional claims debatable or wrong,” or

(2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).¹

If petitioner files a notice of appeal,

(X) petitioner may proceed *in forma pauperis* on appeal.

() petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED this 4th day of May, 2020.


UNITED STATES DISTRICT JUDGE

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.